HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT NO. 5

ORIGINAL JURISDICTION

Criminal Transfer Application No. 17 of 2003

M.P.S. Gill and one another ---- Applicants

Vs.

State of Uttaranchal and others. ---- Opp. Parties

Hon'ble M.M. Ghildiyal, J.

This is criminal transfer application moved U/s 407 of Code of Criminal Procedure with a prayer to transfer the Sessions Trial No. 17 of 2003 State Vs. Sohan Singh and others from the Court of learned District & Sessions Judge, Haridwar to any other competent court having jurisdiction in the State of Uttraranchal.

Heard Sri Nanak Chand Gupta learned Counsel for the applicants and Sri Navneet Kaushik learned Counsel for O.P. No.2 to 6 and perused the record as well as the Counter affidavit and supplementary affidavit filed today in the Court.

The applicants in their affidavit have stated that the learned District and Sessions Judge has close relations with the family of the O.P. No.6 who is one of the accused in the sessions trial and during the pendency of the trial, the father of the accused-O.P. No.6 was died and the learned District & Sessions Judge has granted him short term bail and also attended the funeral ceremony of O.P. No.6 and had gone to the house of deceased-O.P. No.6 and, as such, the Sessions Judge granted favour while discharging the witness Sri Rishipal. It is also submitted by the applicants that the son of the O.P. No.6 was seen visiting the chamber of the learned Sessions Judge in number of occasions. It was rumor in general that the learned Sessions Judge has been paid Rs. 10 lacs for the acquittal of the O.P.

On 18.07.2003 this Court passed order, asking comments from the District & Sessions Judge, Haridwar within a week. Today the case is listed. I have gone through the comments sent by the

learned District & Sessions Judge, Haridwar. In the affidavit the applicants have submitted that it is general rumor that the Sessions Judge has been paid Rs. 10 lacs for acquittal of the accused. The allegations have been made against the District & Sessions Judge in a very casual manner. The applicants have themselves stated that it is a general rumor. The applicants cannot be permitted to make such a baseless and unsustainable allegations.

The applicants have further submitted that the learned Sessions Judge had discharged the witness Sri Rishipal. Perusal of the comments of learned Sessions Judge reveals that Sri Rishipal was discharged not by the present District & Sessions Judge against whom the transfer application has been moved. Sri Rishipal was discharged by the them leaned District & Sessions Judge who has already been transferred From Haridwar. The applicants and the counsel for the applicants cannot be permitted to make such irresponsible statements. The applicants have further submitted that the present District & Sessions Judge has attended the funeral of the father of the accused and had gone to the house of the accused and further, the son of the accused was seen visiting number of occasions in the chamber of the learned Sessions Judge who is in close relation of the accused. In his comments, the learned Sessions Judge has submitted that prior to his posting at Haridwar he has never visited Haridwar and he has neither any remote relations at Haridwar nor, at all, the accused are relatives of the District Judge. The son of the accused never visited the chamber of the Districted & Sessions Judge and the District Judge has not attended the funeral as has been alleged by the applicants, nor he ever visited the house of the accused as he is not known to the accused. He has no relation with the accused direct or indirect, close or remote.

The applicants in their affidavit have also stated that the learned Sessions Judge has granted short-term bail to the accused. The

comment sent in this regard divulge that this allegation too is incorrect. On the death of father of the accused, an application was moved on behalf of the accused to attend the funeral and the applicant was permitted to join the cremation and other ceremony under police force by the learned Sessions Judge. No short-term bail was granted. The Court cannot permit the applicants of making such type of allegations, which have no basis.

For the foregoing reasons recorded above, the transfer application is dismissed.

(M.M. Ghildiyal, J.)

July 29. 2003;
NCM: